



ADGM COURTS

محاكم سوق أبوظبي العالمي

In the name of

His Highness Sheikh Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION**

In the matter of the Insolvency Regulations 2015

**IN THE MATTER OF NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A
DEED OF COMPANY ARRANGEMENT) AND THE RELATED DOCA COMPANIES SET OUT
IN SCHEDULE A**

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2022] ADGMCFI 0002
Before:	Justice Sir Andrew Smith
Decision Date:	1 April 2022
Decision:	Application for declarations granted.
Hearing Date(s):	21 October 2021; 31 March 2022.
Date of Orders:	1 April 2022
Catchwords:	Deeds of Company Arrangement; Exercise of discretion to grant declarations to facilitate the recognition and enforcement of the DOCAs in other jurisdictions
Legislation Cited:	Insolvency Regulations 2015 ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations
Cases Cited:	Padden v Arbuthnot Pensions & Investments Ltd, [2004] EWCA Civ 582 Financial Services Authority v Rourke, [2001] EWHC 704 (Ch.) Egeneonu v Egeneonu, [2017] EWHC 43 (Fam.)
Case Number:	ADGMCFI-2020-020
Parties and representation:	<p>Applicants:</p> <p>Mr Richard Dixon Fleming and Mr Benjamin Thom Cairns, acting as joint administrators of NMC Healthcare LTD (in administration) (subject to a deed of company arrangement) (LTD) and the other companies set out in Schedule A (DOCA Companies); and as deed administrators of LTD and the DOCA Companies</p> <p>Representation:</p> <p>Mr Tom Smith QC and Mr Adam Al-Attar, instructed by Quinn Emanuel Urquhart & Sullivan UK LLP</p>

JUDGMENT

1. The Applicants are the Joint Administrators (“**JAs**”) of the Deeds of Company Arrangement (“**DOCAs**”) of 35 companies, registered in the Abu Dhabi Global Market (“**ADGM**”), which were placed into administration by order of this Court made on 27 September 2021. The 35 companies entered into DOCAs, which were executed on 21 September 2021. Amended DOCAs were executed for four of the 35 companies on 27 October 2021. Pursuant to the DOCAs and the amended DOCAs, re-structuring arrangements for the Group were implemented on 25 March 2022. (Hereinafter in this judgment, when I refer to DOCAs, I include the amended DOCAs.)
2. The JAs have applied to this Court for declarations that the DOCAs have been duly executed in accordance with the applicable provisions of the *Insolvency Regulations 2015* (as amended) of the ADGM (“**IR**”), and as to their effect.

3. All the DOCAs include express provisions (i) that the “*agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of ADGM*”; (ii) that “[t]he courts of the ADGM have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed and/or the Restructuring (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) ...”; and (iii) that “*the parties, the Deed Company Creditors, and the Related DOCA Creditors agree that the courts of ADGM are the most appropriate and convenient courts to settle Disputes and accordingly no party bound by this Deed will argue to the contrary*”. (It is not necessary to set out in this judgment the definitions of various terms that are used in these provisions.)
4. The JAs have applied for the declarations in order to facilitate the recognition and enforcement of the DOCAs in other jurisdictions. Their purpose is not to modify, alter or expand their effect. Nor is their purpose to detract in any way from the rights of creditors and members of the companies to make an application to the Court under the IR challenging the conduct of the JAs.
5. I have jurisdiction to make the declarations sought under article 13(7) of the Law No. 4 of 2013, as amended by Law No. 12 of 2020 (the “**Founding Law**”). To my mind, the application falls within article 13(7)(a), being in respect of civil or commercial claims involving ADGM Establishments (sc. the 35 companies); within article 13(7)(b), being in respect of civil or commercial claims arising out of contracts or transactions entered into, executed or performed in whole or in part in ADGM (sc. the DOCAs); and within article 13(7)(d), being in respect of requests or claims which the Court has jurisdiction to consider under section 16(2)(b) of the *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations, 2015* and rule 2(2) of the *Divisions and Jurisdiction (Court of First Instance) Rules, 2015*. This being so, I need not, and do not, decide whether I would also have jurisdiction under section 95(7) of IR.
6. This leads to the question whether, in all the circumstances, I should make declarations for the purpose for which the JAs seek them. The power of courts to grant declarations is a discretionary power, which is not circumscribed by any rule or statute: see *Padden v Arbutnot Pensions & Investments Ltd*, [2004] EWCA Civ 582 at para 19. The Court will be particularly cautious about exercising its power in cases, such as this, where it has not had the advantage of full adversarial argument about the questions before it, but such argument is not an absolute requirement. If the court does not have it, there is a heavy responsibility both on the applicant and its representatives and on the court to examine carefully whether declaratory relief is justified, and if so its terms. Here, I was assisted by careful and balanced submissions from Mr Tom Smith QC and Mr Adam Al-Attar for the JAs, for which I am grateful.
7. Of course, a court will not exercise the discretion to make a declaration unless it considers that it will serve some useful purpose: see *Financial Services Authority v Rourke*, [2001] EWHC 704 (Ch.) Typically, and in general, this will mean that there should be a real and present dispute between parties before the court about a legal right, if not one giving rise to a present cause of action, but this is not a requirement either for the court to have jurisdiction to make a declaration or for exercising it.
8. In this case, there is no such dispute. I do, however, conclude that declaratory relief is likely to serve a useful purpose. In *Egeneonu v Egeneonu*, [2017] EWHC 43 (Fam.), Sir James Munby P expressed himself willing as a judge of the Family Division of the English High Court to exercise the jurisdiction to make a declaration as to the nature of an order made by that Division upon an application brought with a view to facilitate contemplated criminal proceedings in the English courts. (In the event, he rejected the application on its merits, but that does not detract from the authority of his views about when it might be appropriate to make a declaratory order).

9. Here, comparably, the purpose is to facilitate the determination of potential disputes in other Courts, and I am persuaded that, in the circumstances of this case, it is proper for the ADGM Court to make declarations for that purpose. First, the administration orders were made under and in accordance with IR, an ADGM regulation. Secondly, this Court has, since 27 September 2020, been responsible for supervising the administration of the 35 companies. Thirdly, the DOCAs expressly provide that they are governed by and to be construed in accordance with the laws of the ADGM. Fourthly, the DOCAs provide that the Courts of the ADGM should have exclusive jurisdiction to determine disputes, including disputes about their validity. Given these considerations, if any other Court is nevertheless seized of any dispute concerning the DOCAs, it might well wish to be aware of the views of this Court.
10. I should make clear that, while the purpose of the application for the declaratory relief in this case, as in the *Egeneonu* case, is to facilitate proceedings or argument in courts, a declaration of this kind is not intended to bind them or to detract from their jurisdiction to make their own decisions on any applications before them as they see fit and in accordance with the applicable laws. This Court could not do that, and would not contemplate doing so. In the contrary, the purpose of this Court in granting declaratory relief on the application is to assist other courts and authorities in reaching their own decisions on cases that might come before them about the efficacy and effect of the DOCAs by setting out what this Court understands and determines to be their standing and effect. I was satisfied that there was sufficient prospect that it might so assist to justify the declarations sought, provided that I was also satisfied of their merits.
11. I was satisfied that, in principle and subject to careful wording, the declarations for which the JAs applied were justified on their merits. I shall not in this judgment explain why I decided that I should grant declarations in the terms of those in my order: my thinking about this will be sufficiently apparent from the exchanges that I had with Mr Smith at hearings on 21 October 2021 and 31 March 2022. It suffices to reiterate that, as my order makes clear, my intention is that the declarations should faithfully reflect the effect and meaning of the DOCAs, and no more.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
1 April 2022

SCHEDULE A

THE DOCA COMPANIES

(all subject to a deed of company arrangement)

1. **NMC Healthcare LTD** (with company number 000004210), including its Dubai branch with license no. 610400 (in administration)
(formerly known as N.M.C Health Care (L.L.C), with license no. 610400)

Related DOCA (IVF Amendment) Companies

2. **Eve Fertility Center LTD** (with company number 000004206), including its branch Eve Fertility Center LTD – SHJ.BR, with license no. 539107 (in administration)
(formerly known as Eve Fertility Center L.L.C, with license no. 539107)
3. **Fakih IVF Fertility Center LTD** (with company number 000004224), including its branches Fakih IVF Fertility Center LLC – Branch 3, with license no. CN-1360709-3, and Fakih IVF Fertility Center LLC – Branch 4 with license no. CN-1360709-4 (in administration)
(formerly known as Fakih IVF Fertility Center L.L.C., with license no. CN-1360709)
4. **Fakih IVF LTD** (with company number 000004220), including its Dubai branch with license no. 666849 (in administration) (formerly known as Fakih IVF L.L.C, with license no. 666849)

Related DOCA (No IVF Amendment) Companies

5. **Bait Al Shifaa Pharmacy LTD** (with company number 000004236), including its branches Bait Al Shifaa Pharmacy LLC Dubai Branch- Jafza, with commercial license no. 164999 and Bait Al Shifaa Pharmacy – Dubai Branch, with license no. 224351 (in administration)
(formerly known as Bait Al Shifaa Pharmacy (L L C), with license no. 224351)
6. **Grand Hamad Pharmacy LTD** (with company number 000004238), including its branch Grand Hamad Pharmacy LTD, with license no. 607766 (in administration)
(formerly known as Grand Hamad Pharmacy LLC, with license no. 607766)
7. **Hamad Pharmacy LTD** (with company number 000004209), including its branch Hamad Pharmacy LTD, with license no. 118795 (in administration)
(formerly known as Hamad Pharmacy L.L.C, with license no. 118795)
8. **N M C Provita International Medical Center LTD** (with company number 000004240), including its branches N M C Provita International Medical Centre L.L.C. – Branch 1, with license no. CN-1194307-1, Provita International Medical Centre L.L.C. – Branch 2, with license no. CN-1194307-2, and N M C Provita International Medical Centre L.L.C. – Branch 3, with license no. CN-1194307-3 (in administration)
(formerly known as N M C Provita International Medical Center L.L.C., with license no. CN-1194307)
9. **N M C Royal Hospital LTD** (with company number 000004225), including its branches NMC Clinic (BR of NMC Royal Hospital LLC), with license no. 814785, NMC Polyclinic Branch of NMC Hospital LLC, with license no. 163880, NMC DIC Clinic and Pharmacy (BR of NMC Royal Hospital LLC), with license no. 860025, NMC Hospital (BR of NMC Royal Hospital LLC), with license no. 878386, and its Dubai branch with license no. 710432 (in administration)
(formerly known as N M C Royal Hospital L.L.C, with license no. 710432)

10. **NMC Royal Hospital LTD** (with company number 000004237), including its branch Al Zahra Pvt. Hospital Company LTD – SHJ.BR, with license no. 16506 (in administration)
(formerly known as Al Zahra Pvt. Hospital Company Limited, with license no. 16506)
11. **N M C Royal Hospital LTD** (with company number 000004245) (in administration)
(formerly known as N M C Royal Hospital L.L.C., with license no. CN-2015786)
12. **N M C Royal Medical Centre LTD** (with company number 000004197), including its branches NMC Royal Medical Centre LLC – Branch (Shahama), with license no. CN- 2912685, and NMC Royal Medical Centre LLC –Branch (Karama), with license no. CN-2895125, and NMC Royal Medical Centre LLC –Branch 1 (Abu Dhabi), with license no. CN-2150457-1 (in administration)
(formerly known as N M C Royal Medical Centre L.L.C., with license no. CN-2150457)
13. **N M C Specialty Hospital LTD** (with company number 000004217) (in administration)
(formerly known as NMC Specialty Hospital- LLC, with license no. CN-1026386)
14. **N.M.C Specialty Hospital LTD** (with company number 000004241), including its Dubai branch with license no. 562359 (in administration)
(formerly known as N M C Specialty Hospital (LLC), with license no. 562359)
15. **New Medical Centre LTD** (with company number 000004214), including its Dubai branch with license no. 127562 (in administration)
(formerly known as New Medical Centre L.L.C, with license no. 127562)
16. **New Medical Centre LTD** (with company number 000004216), including trading in Ras Al Khaimah as NMC Royal Dental Centre under license no. 38678, NMC Royal Medical Centre, under license no. 21518 and NMC Royal Pharmacy, under license no. 21669 and including its branches New Medical Centre Ajman LLC-BR, with license no. 95454, New Medical Centre L.L.C – Branch of Abu Dhabi 2, with license no. CN-1831682, New Medical Centre L.L.C.- Branch, with license no. 185190 and New Medical Centre LTD – SHJ.BR, with license no. 25954 (in administration)
(formerly known as New Medical Centre L L C, with license no. 25954)
17. **New Medical Centre Pharmacy LTD** (with company number 000004253), including its branch New Medical Centre Pharmacy – LLC – Al Ain – NMC – Branch 1, with license number CN-1135313-1 (in administration)
(formerly known as New Medical Centre Pharmacy - L.L.C – Al Ain – NMC, with license no. CN-1135313)
18. **New Medical Centre Pharmacy LTD** (with company number 000004255), including its branches New Medical Centre Pharmacy/Branch, with license no. 96634, New Medical Centre Pharmacy LLC NMC Branch 1, with license no. 766270 and New Medical Centre Pharmacy LTD – SHJ.BR, with license no. 608411 (in administration)
(formerly known as New Medical Centre Pharmacy LLC– N.M.C, with license no. 608411)
19. **New Medical Centre Specialty Hospital LTD** (with company number 000004228) (in administration)
(formerly known as New Medical Centre Specialty Hospital LLC, with license no. CN- 1135806)
20. **New Medical Centre Trading LTD** (with company number 000004218), including its branches New Medical Centre Trading LLC Branch 1, with license no. CN-1027356- 1, New Medical Centre Trading LLC Branch 2, with license no. CN-1027356-2, and New Medical Centre Trading LLC Branch 3, with license no. CN-1027356-3 (in administration)
(formerly known as New Medical Centre Trading L.L.C, with license no. CN-1027356)
21. **New Pharmacy Company LTD** (with company number 000004230), including its branches New Pharmacy Company WLL – Branch 1, with license no. CN-1029364- 1, New Pharmacy Company WLL – Branch 2, with license no. CN-1029364-2, New Pharmacy Company WLL – Branch 4, with license no. CN-1029364-4, New Pharmacy Company WLL – Branch 6, with

- license no. CN-1029364-6, New Pharmacy Company WLL – Branch 7, with license no. CN-2914258, New Pharmacy Company WLL – Branch – (Shahama), with license no. CN-2936047, and New Pharmacy Company WLL – Branch 9, with license no. CN-2832792 (in administration)
(formerly known as New Pharmacy Company W L L, with license no. CN-1029364)
22. **New Sunny Medical Centre LTD** (with company number 000004202), including its branch New Sunny Medical Centre LTD – SHJ.BR, with license no. 556959 (in administration)
(formerly known as New Sunny Medical Centre LLC; N.M.C Medical Center L.L.C Shj. BR 2, with license no. 556959)
23. **NMC Royal Family Medical Centre LTD** (with company number 000004243) (in administration)
(formerly known as NMC Royal Family Medical Centre L.L.C., with license no. CN- 1491505)
24. **NMC Royal Women’s Hospital LTD** (with company number 000004235), including its branch Cooper Health Clinic 1 – Dubai Branch, with license no. 689748 (in administration)
(formerly known as NMC Royal Womens Hospital L.L.C., with license no. CN-1532709)
25. **NMC Trading LTD** (with company number 000004233), including its branches NMC Trading LLC Branch-DXB, with license no. 637024, NMC Trading LLC (Branch) – DXB, with license no. 755519, NMC Trading LLC Branch-Ajman, with license no. 57474, NMC Trading LLC RAK Branch, with license no. 32957, NMC Trading LLC (Branch)-Fujairah, with license no. 14167, and its Dubai branch license no. 207104 (in administration)
(formerly known as NMC Trading L L C, with license no. 207104)
26. **Reliance Information Technology LTD** (with company number 000004234) (in administration)
(formerly known as Reliance Information Technology.LLC, with license no. CN-1031535)
27. **Sharjah Pharmacy LTD** (with company number 000004239), including its branch Sharjah Pharmacy LTD – SHJ.BR, with license no. 14966 (in administration)
(formerly known as Sharjah Pharmacy L.L.C, with license no. 14966)
28. **Sunny Al Buhairah Medical Centre LTD** (with company number 000004199), including its branch Sunny Al Buhairah Medical Centre LTD – SHJ.BR, with license no. 558052 (in administration) (formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR and Sunny Al Buhairah Medical Centre LLC, with license no. 558052)
29. **Sunny Al Nahda Medical Centre LTD** (with company number 000004232), including its branch Sunny Al Nahda Medical Centre LTD – SHJ.BR, with license no. 572409 (in administration)
(formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 4 and Sunny Al Nahda Medical Centre LLC, with license no. 572409)
30. **Sunny Dental Centre LTD** (with company number 000004198), including its branch Sunny Dental Centre LTD – SHJ.BR, with license no. 571311 (in administration)
(formerly known as N.M.C Dental Centre L.L.C and Sunny Dental Centre LLC, with license no. 571311)
31. **Sunny Halwan Speciality Medical Centre LTD** (with company number 000004204), including its branch Sunny Halwan Speciality Medical Centre LTD – SHJ.BR, with license no. 747560 (in administration)
(formerly known as Sunny Halwan Speciality Medical Centre LLC, with license no. 747560)
32. **Sunny Maysloon Speciality Medical Centre LTD** (with company number 000004205), including its branch Sunny Maysloon Speciality Medical Centre LTD– SHJ.BR, with license no. 751420 (in administration)
(formerly known as Sunny Maysloon Speciality Medical Centre L.L.C, with license no. 751420)

33. **Sunny Medical Centre LTD** (with company number 000004231), including its branch Sunny Medical Centre LTD – SHJ.BR, with license no. 212280 (in administration)
(formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 1 and Sunny Medical Centre LLC, with license no. 212280)
34. **Sunny Sharqan Medical Centre LTD** (with company number 000004203), including its branch Sunny Sharqan Medical Centre LTD – SHJ.BR, with license no. 744404 (in administration)
(formerly known as Sunny Sharqan Medical Centre L.L.C, with license no. 744404)
35. **Sunny Specialty Medical Centre LTD** (with company number 000004200), including its branch Sunny Specialty Medical Centre, with license no. 545893 (in administration)
(formerly known as N.M.C MEDICAL CENTER L.L.C SHJ.BR 3 and Sunny Speciality Medical Centre LL.C., with license no. 545893)